LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 29 1958
JAMES R. BROWNING, Clerk

No. 242

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1958

---

WIRL TELEVISION COMPANY, *Petitioner*

v.

UNITED STATES OF AMERICA

and

FEDERAL COMMUNICATIONS COMMISSION

---

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

---

## BRIEF IN OPPOSITION OF WEST CENTRAL BROADCASTING COMPANY

---

JACK P. BLUME
1001 Connecticut Ave., N. W.
Washington 6, D. C.
*Attorney for Respondent, West Central Broadcasting Company*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1958

---

No. 242

---

WIRL TELEVISION COMPANY, *Petitioner*

v.

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION, ET AL.

---

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

---

## BRIEF OF WEST CENTRAL BROADCASTING COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

---

### INTRODUCTION

West Central Broadcasting Company (referred to herein as "West Central") intervened in the proceedings in the Court below and is one of the Respondents here. It opposes the Petition for Writ of Certiorari

of WIRL Television Company filed in this Court on July 30, 1958.

The statement of the "Questions Presented" and the "Statement of the Case" set out in the Petition are not accurate and are not accepted by Respondent West Central. Since the statement of such matters set forth in the Brief in Opposition of the Government are acceptable to it, this Respondent adopts that statement for purposes of this Brief, and will proceed directly to a statement of the reasons why the Writ of Certiorari prayed for should not be granted.

## ARGUMENT

Each of the questions presented for review here by Petitioner was presented to and passed upon by the Court below. Three of these questions, namely, whether the reallocation of television channels ordered by the Commission in the Peoria and Tri-Cities areas was consistent with Section 307(b) of the Communications Act; whether such action was arbitrary or discriminatory; and whether Petitioner was entitled to a full evidentiary hearing prior to the reallocation, were specifically considered and ruled upon in the Decision below (253 F(2d) 863), affirming the Commission's orders. As pointed out in the Government's Brief in Opposition, the Court below was clearly correct in its disposition of these questions, and the Petition makes no new showing with respect to them sufficient to support the granting of certiorari (Rule 19).

Petitioner also sought unsuccessfully to raise in the Court below the fourth question advanced in its present Petition, the gravamen of which is the charge that a United States Senator, Robert S. Kerr, majority stockholder in the corporate licensee of one of the

Peoria UHF television stations, produced a reallocation of TV channels to the benefit of that station "through his influence, power, and prestige as a United States Senator" (Petition, pp. 3-4). This charge of Senatorial and Commission misconduct was summarily and properly disposed of in the Court below since it is completely unsubstantiated either in or outside the record.

In its lengthy argument (Petition, pp. 32-38), Petitioner cites nothing *in the record* to support its unwarranted, improper and, indeed, reckless charges. Moreover, it cites nothing *outside the record*—and it could not do so—which would lend any support to its claims. The only facts correctly recited by Petitioner are: (1) that a United States Senator, Robert S. Kerr, is a stockholder of the licensee of one of the two UHF stations operating in Peoria, and (2) that the Senate Committee on Interstate and Foreign Commerce (of which Senator Kerr is not, and was not at the time, a member) held extensive hearings on the UHF problem. But Petitioner is clearly wrong in seizing upon these two isolated facts as a basis for its wild speculations of official misconduct, since there is simply no connection between them and the Commission's action amending its TV channel allocation rules. Petitioner is not even correct in asserting (Petition, p. 34) that the Senate Finance Committee, of which Senator Kerr is a member, has supervisory power over the appropriations of the Federal Communications Commission (Cong. Directory, January, 1956, Ed. pp. 227, 266; Rule XXV(h), Standing Rules of the Senate, 60 Stat. 812, 817). Further, contrary to the implication sought to be raised (Petition, pp. 32, 34), none of the pleadings submitted to the Federal Communica-

tions Commission by West Central in any of the Peoria deintermixture proceedings were personally signed or filed by Senator Kerr and, in fact, he did not personally participate in any phase of the proceedings.

In summary, the Petition utterly fails to support the charges of improper influence, violations of public trust, and the other accusations so recklessly and indiscriminately flung about by Petitioner. These allegations and charges have no foundation in fact and are based solely upon unwarranted speculations, conceived in the fertile mind of Petitioner.

## CONCLUSIONS

The decision below is correct and no important issue warranting further review by this Court is presented. Since no basis for granting certiorari has been shown by Petitioner, the Petition for a Writ should be summarily denied.

Respectfully submitted,

JACK P. BLUME,
*Attorney for Respondent*

Dated: August, 1958

### Certificate of Service

I, Jack P. Blume, hereby certify that a true and correct copy of the Brief in Opposition of West Central Broadcasting Company was sent this 29th day of August, 1958, by first class mail, postage prepaid, to the following:

Daniel M. Friedman, Esq.
Department of Justice
Washington 25, D. C.

Warren E. Baker, Esq.
General Counsel
Federal Communications Commission
Washington 25, D. C.

Marcus Cohn, Esq.
Cohn & Marks
317 Cafritz Building
Washington 6, D. C.
Attorney for Hilltop Broadcasting Company and Illiway Television, Inc.

Timothy W. Swain, Esq.
912 Central National Bank Building
Peoria, Illinois
Attorney for WIRL Television Company

Ned A. Peterson, Esq.
Pierson, Ball & Dowd
1007 Ring Building
Washington 6, D. C.
Attorney for WMBD, Inc.

McKenna & Wilkinson
1735 DeSales Street, N. W.
Washington 6, D. C.
Attorneys for Tele-Views News Company and American Broadcasting-Paramount Theatres, Inc.

Harry J. Daly, Esq.
1028 Pennsylvania Bldg.
Washington 4, D. C.
Attorney for Mid Illinois Television Company.

.....
JACK P. BLUME